



SPONSOR: Rep. J. Johnson & Sen. Townsend

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 470

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO RELEASE OF PERSONS ACCUSED OF CRIMES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1007, Title 10 of the Delaware Code by making insertions as shown by underline as follows:

§ 1007 Disposition of child pending adjudication in Family Court or trial in Superior Court; payment for care.

(a) Pending adjudication no child alleged to be delinquent may be placed in secure detention operated, or contracted, by the Department of Services for Children, Youth and Their Families unless the Court determines that no means less restrictive of the child's liberty gives reasonable assurance that the child will attend the adjudicatory hearing and:

(1) The child is a fugitive from another jurisdiction on a delinquency petition; or

(2) The child is charged with an offense, which, if committed by an adult would constitute a felony, including offenses contained within this title, Title 11, and Chapter 47 of Title 16, the Uniform Controlled Substance Act; or

(3) The child is charged with an offense, which, if committed by an adult would constitute a class A misdemeanor, provided that offense involved violence, a sexual offense, unlawful imprisonment, or a weapons offense; or

(4) The child has, in the past, failed to appear at a delinquency hearing and circumstances indicate the child will likely fail to appear for further proceedings, or, absent a prior history of failure to appear, circumstances demonstrate a substantial probability that the child will fail to appear at a subsequent hearing; or

(5) The child is alleged to be intimidating 1 or more witnesses or otherwise unlawfully interfering with the administration of justice; or

(6) The child has escaped from a secure or nonsecure detention facility, or has demonstrated a pattern of repeated failure to comply with court-ordered placement pursuant to a delinquency petition in an out-of-home residential or foster care setting; or

(7) The child has incurred new charges while a resident, as a result of a prior delinquency petition, of a nonsecure detention facility, out-of-home residential or foster care setting and the parent, guardian, custodian or facility refuses to take custody of the child; or

(8) The child has breached a condition of release; or,

(9) Having been released pending adjudication on prior charges for which the child could have been detained, the child is alleged to have committed additional charges on which the child would not normally be permissibly held in secure detention under this section.

(c) If the Court places a child in secure detention pending adjudication, the Court shall state in writing the basis for its detention determination pursuant to subsection (a) of this section and the reasons for not employing any of the secure detention alternatives under subsection (b) of this section. In the event that a risk assessment instrument has been completed for the child for the pending offense, with the resulting presumptive disposition being to release the child, or hold the child in a nonsecure detention facility, the Court shall further state in writing the basis for overriding that presumption.

(d)(1) If a child aged 16 or older has been ordered by a court to be held in secure detention pending trial in Superior Court and is found to be non-amenable to Family Court pursuant to §§ 1010 and 1011 of this title, the Department of Services for Children, Youth and Their Families may file a motion in Superior Court to place the child in a secure detention facility other than a facility operated by the Department of Services for Children, Youth and Their Families because the Department's secure detention facilities are at or beyond capacity or the child poses a security risk to self or other youth served by the Department in the facilities it operates. If a motion is filed, Superior Court shall conduct an evidentiary hearing unless the parties reach an agreement to a secure detention for the child.

a. After an evidentiary hearing, the Superior Court may order the child to be placed in a secure detention facility not operated by the Department if the Court finds by clear and convincing evidence that the Department's secure detention facilities are at or beyond capacity and the child's safety or health is at risk by remaining at a facility operated by the Department. If the Court makes such a finding, the Department shall provide the Court with a status on the capacity of the Department's secured detention facilities at least weekly and no child may be held in a secured detention facility for adults for more than 60 days.

b. After an evidentiary hearing, the Superior Court may order the child to be placed in a secure detention facility not operated by the Department if the Court finds by clear and convincing evidence that the child is a danger to self or other youth served by the Department in the facilities it operates and the child's needs would be better served at a facility not operated by the Department.

(de) If a child has been placed in secure detention pending adjudication on a commitment from the Justice of the Peace Court, an initial hearing to determine the appropriateness of detention and to review conditions of release shall be held the next day the Family Court is in session.

(ef) A detention review with counsel shall be heard within 14 days of the initial detention hearing and if detention is continued, detention review hearings shall be held thereafter at intervals not to exceed 30 days.

(fg) When a juvenile is detained pending adjudication the adjudicatory hearing shall be held no later than 30 days from the date of detention. If no adjudicatory hearing is held within 30 days, upon motion by a juvenile, the Family Court shall within 72 hours fix a date for the adjudicatory hearing unless it grants a continuance of the hearing for good cause shown.

(gh) Pending adjudication the Court may release a child alleged to be dependent or neglected to the custodian; or, where the welfare of the child appears to require such action, place the child in the care of the Department of Services for Children, Youth and Their Families or any suitable person or agency; provided, however, that if the child is placed with someone other than a relative, the Family Court may require an evaluation and report from the Department of Services for Children, Youth and Their Families.

(hi) In any instance in which a person responsible for the custody and care of a child refuses to take custody pending adjudication of that child, the Family Court may order the person legally liable therefore to pay for the child's care during the period of placement outside the person's own home.

(ij) Pending adjudication, the Family Court may defer proceedings pending further investigation, medical or other examination, or where the interest of a child will thereby be served.

(jk) For purposes of subsections (a)-(c) of this section above, the term "the Court" shall mean both the Justice of the Peace Court and the Family Court. In all other subsections the term shall mean the Family Court only.

Section 2. This Act shall expire 2 years from its effective date.

SYNOPSIS

This Act would permit the Superior Court to conduct an evidentiary hearing, upon motion from the Department of Services for Children, Youth & Their Families, before placing a child 16 years of age or older, in a secure detention facility pending trial. The purpose of the hearing is for the Court to determine whether the child should be placed in a facility not operated by the Department because either the Department's facilities are at or beyond capacity or the child is deemed to be a risk to self or to other children held in secure detention facilities operated by the Department. If the Court orders the child transferred solely because the Department's facilities are at or beyond capacity, the Court shall require the Department to transfer the child as soon as the capacity level is below capacity and to provide at least weekly updates on the capacity to the Court and no child may be held in a facility for adults for longer than 60 days. A child may also be transferred if the Court finds clear and convincing evidence that the child is a danger to self or other youth and the child's needs would be better served at a facility not operated by the Department. This bill contains a sunset provision that is 2 years from the effective date.